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No. 86-876 (3)

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1986

STAR-KIST FOODS, INC.,
a California corporation,

Petitioner,

vs.

COUNTY OF LOS ANGELES,
CITY OF LOS ANGELES AND
CITY OF LONG BEACH,

Respondents.

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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I.

ARGUMENT

The petition is moot. Petitioner has requested this Court to exercise its discretionary jurisdiction in this case by issuing a writ of certiorari to the California Supreme Court. In support of this request,

Petitioner cites the importance of the case from both a Federal procedural and Commerce Clause standpoint.

Respondents contend that subsequent statutory changes have rendered these issues moot with regard to all persons in California, save Petitioner.

A. The Case No Longer Presents A Substantial Federal Procedural Issue On The Standing Of Counties To Sue The State.

Petitioner assigns as error the California Supreme Court's holding that a county of the State has standing to challenge the validity of a state statute as being repugnant to the United States Constitution (Starkist Foods, Inc. v. County of Los Angeles (1986) 42 Cal. 3d 1, 10).

No longer is this an issue in California. In 1976, the Los Angeles County Assessor refused to follow the provisions of a business

inventory tax statute (Revenue and Taxation Code Section 225). As a result of this action, the California Legislature enacted Section 538 of the Revenue and Taxation Code in 1978. (The chaptered law is set forth in Appendix A hereto). This section provides that if an Assessor believes a tax statute is unconstitutional, in lieu of making an assessment, he shall file a declaratory relief action against the State setting forth his concerns.

The section was enacted as urgency legislation which went into "effect immediately to eliminate the further potential harm from such action by assessors, especially with respect to Sections 225 and 253.10 of the Revenue and Taxation Code." (1978 Stats, Ch. 1188, Sec. 4, p. 3840).

In light of this section, no future case raising commerce clause concerns can reach this Court in the same posture as this one.

B. The Case No Longer Presents A Substantial Federal Issue Involving The Commerce Clause.

This case involves the constitutionality of Section 225 of the California Revenue and Taxation Code as it was applied to Petitioner in 1976. That section exempted from a business inventory tax imported personal property which was destined for an interior state. No similar exemption was provided domestic goods shipped to an interior state.

Again in direct response to the situtation presented by the actions of the Los Angeles County Assessor, the Legislature enacted urgency legislation. In 1980, all such personal property, foreign and domestic, was exempted from taxation. (1980 Stats, Ch. 411 Sec. 8, p. 801, attached hereto as Appendix B) The effect of such legislation was to eliminate the disparate treatment of domestic and foreign goods. Hence, no longer was there

a violation of the Commerce Clause.

In 1984, the Legislature repealed Section 225 to formally close the chapter on California's taxation of business inventory. (1984 Stats, Ch. 678, Sec. 10, p. 1, attached hereto as Appendix C).

Petitioner is the only taxpayer in the State of California that has a stake in the outcome of this case. All other litigation which had been filed regarding Section 225 has been finally resolved.

II.

CONCLUSION

In order for certiorari to be granted, this Court has uniformerly required the issues presented be of great importance under the Constitution. Only cases presenting questions whose resolution will have immediate importance far beyond the particular facts and parties involved will be selected for a grant

of certiorari (From Address of Chief Justice Vinson before the American Bar Association, September 7, 1949, 69 S.Ct. v., vi).

These words continue to ring true today. A problem must be beyond the academic or the episodic and be of importance to the public as distinguished from important to the parties in order to warrant review by this Court (Rice v. Sioux City Cemetary 349 U.S. 70, 74 (1955)).

While an issue may be ripe for decision by state courts, it may spoil if the statute which is the basis for the action is repealed (U.S. Department of Justice v. Provenzano 469 U.S. ___, 105 S.Ct. 413, (1984). In civil cases, speculative contingencies which might conceivably affect substantial rights of the interested parties afford no basis for the Court passing on the substantive issues in the absence of evidence that there is a prospect of immediacy and reality. (Tiverton

Board of License Commissioners v. Pastore 469 U.S. 238 (1985)).

Counsel for Respondents is under a duty to apprise the Court of changed circumstances which might influence the Court in its decision to grant or deny certiorari; especially when such changes are the repeal of the very statute in question in this case (Fusari v. Steinberg 419 U.S. 379 (1975)).

Respondents respectfully submit that whatever substantial Federal Constitutional issues were once presented by this case, they have been eliminated by the repeal of Section 225 and enactment of Section 538 and warrant a denial of certiorari by this Court.

DATED: 2/19/87

Respectfully submitted,

DE WITT W. CLINTON
County Counsel
By: PHILIP H. HICKOK
Principal Deputy
County Counsel

Attorneys for Respondents

APPENDIX A

CHAPTER 1188

An act to amend Section 5141 of, and to add Sections 538 and 5152 to, the Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately. [Approved by Governor September 26, 1978. Filed with Secretary of State September 26, 1978]

The people of the State of California do enact as follows:

SECTION 1. Section 538 is added to the Revenue and Taxation Code, to read:

538.

(a) If the assessor believes that a specific provision of the Constitution of the State of California, or this division, or of a rule or regulation of the board is unconstitutional or invalid, and as a result thereof concludes that property should be assessed in a manner contrary to such provision, or the assessor proposes to adopt general interpretation of a specific

provision of the Constitution of the State of California, or this division, or of a rule or regulation of the board, that would result in a denial to five or more assessees in that county of an exemption, in whole or in part, of their property from property taxation, the assessor shall, in lieu of making such an assessment, bring an action for declaratory relief against the board under Section 1060 of the Code of Civil Procedure. The court shall allow intervention in such action by potential assessees and other assessors under Section 387 of the Code of Civil Porcedure to the greatest extent practacable.

(b) If the assessor obtains judgment in such action upholding the validity of such assessment, the assessor shall correct the roll in accordance with Section 4831 consistent with such judgment within 60 days of the date upon which the judgment becomes

final, regardless of the time limit otherwise provided in Section 4831. The assessor shall not levy an assessment based upon the subject matter of the action under any other section of this division.

(c) Within 60 days of notice of such assessment, a person assessed under subdivision (b) may file a claim for refund relating to the assessment of any of the person's property for the fiscal year to which the assessment under subdivision (b) relates regardless of the time limit otherwise provided in Section 5097.

. . .

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

The Legislature has adopted urgency legislation in the past to prevent severe hardship that would be caused to various sectors of the state by the operation of the property tax laws. Certain assessors have chosen not to follow such legislation, resulting in assessments causing the very hardship sought by the Legislature to be avoided. This act must go into effect immediately to eliminate the further potential harm from such action by assessors, especially with respect to Sections 225 and 253.10 of the Revenue and Taxation Code.

APPENDIX B

CHAPTER 411

An act to amend Section 65863.5 of, and to amend and renumber Section 65863.5 of the Government Code, to amend Sections 107, 155, 279.5, 408.1, 506, 533, 2188.6, 2189.6, 2190, 2191.3, 2635, 2922, 3513, 3692, 3698.5, 3707, 3708, 3710, 3772.5, 3804, 4217, 4377.1, 4675, 4831, 4835, 4836, 5150, and 5151 of, to amend and renumber Section 135 of, to add Sections 155.3, 219, 275.5,455, 568, 3706.1, and 4672.2 to, to repeal Sections 219, 225, 253.10, 402.2, 568, 2822, 3696, 3696.5, 3697, 3715, and 4152 of, and to repeal Part 11 (commencing with Section 5501) of Division 1 of, the Revenue and Taxation Code, and to amend Section 19.80 of Chapter 1150 of the Statutes of 1979, relating to taxation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 11, 1980. Filed with Secretary of State July 11, 1980.]

The people of the State of California do enact as follows:

. . .

SEC. 8. Section 219 is added to the Revenue and Taxation Code to read:

219. For the 1980-81 fiscal year and fiscal years thereafter, business inventories are exempt from taxation and the assessor shall not assess business inventories.

. . .

SEC. 52. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

Certain provisions of this measure, including the repeal of the livestock head-day tax, must be in effect during the 1980-81 fiscal year in order to avoid useless filings of reports, and to correct certain problems

relating to collection of taxes which create confusion for taxpayers and jeopardize collection of revenues in an orderly manner.

APPENDIX C

CHAPTER 678

(Assembly Bill No. 2433)

An act to amend Sections 11126, 15606, 51111, and 51112 of the Government Code, and to amend Sections 64, 261, 408, 408.2, 409, 423, 423.5, 426, 437, 439.2, 439.3, 469, 480.1, 480.2, 482, 670, 1638, 1640.1, 2132, 2256.2, 5832, 38204, and 38905.1 of, to add Section 11342 to, and to repeal Sections 155.2, 155.3, 155.21, 225, 225.2, 225.3, 226, 233, 253.10, 619.1, 981, 992, 993, 2054, 38902, and 38903.1 of, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor August 20, 1984, Filed with Secretary of State August 22, 1984.]

. . .

The people of the State of California do enact as follows:

. . .

SEC 10. Section 225 of the Revenue and Taxation Code is repealed.

SEC. 11. Section 225.2 of the Revenue and Taxation Code is repealed.

SEC. 12. Section 225.3 of the Revenue and Taxation Code is repealed.

SEC. 13. Section 226 of the Revenue and Taxation Code is repealed.

SEC. 14. Section 233 of the Revenue and Taxation Code is repealed.

SEC. 15. Section 253.10 of the Revenue and Taxation Code is repealed.